

**CUSTOMARY LAW TOWARD MATAMUSAN DETERMINATION**

**TO CUSTOM SOCIETY AT WEWIKU WEHALI, BELU, NTT**

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**ABSTRACT** Customary law is the law or unwritten rule that grow and thrive in a society that is only obeyed by custom society in Belu. One of the most important customary law in Belu is the marriage law. Matrilineality system in

south Belunese descent is traced through the mother and maternal ancestors. However, in this matrilineal system, there is still a customary law that maintains the father's lineage based on customary law by adopting which called *matamusan* which is really interesting because it is different with matrilineal system in Minangkabau as the most popular matrilineal society. The research design of this thesis is descriptive qualitative research. It is intended to describe about *matamusan* as customary adoption system, chronological step of *matamusan* determination, the development of *matamusan* implementation, factors influencing the development of *matamusan* determination, and the effectiveness of customary law toward *matamusan* determination. From the result of this study, it was clear that customary law is still effective in handle the violation of *matamusan* determination.

**Key words :** Customary Law, Custom Society, *Matamusan* Determination and *Wewiku Wehali*

## **Introduction**

Regional culture reflected in various aspects of community life in all regions in Indonesia. Each region have the characteristics of different cultures. One form of regional cultures that still exist in Indonesian society is customary. Indonesian society has been living in an environment of Indonesian customary law. The laws are constantly evolving along with the development of people's lives to this day. Because that customary law needs special attention from all of us and it can be the part of our cultural pride of Indonesia.

At the present time appears different views and interpretations among our legal experts about whether and how is the role of customary law in the formation of National customary law. On one side some people extolling the customary law while on the other hand there is also a group of legal scholars who consider that customary law as well as its position is very low so it is unlikely to get a role in development. The opinion of indigenous

legal position have being inequality because the law that we use get rapid social change. in the development process, the law has had several functions.

According to Heger (1983 ; 25-25), the law as a means of development has three sectors :the law as a tool to controle,so the law can take a decision in the problem solving which occurs ; law as a catalyst, which is a medium that allows the change with the help of a creative force in the field of legal profession; law as a balancing medium that serves to maintain balance and harmony between the interests of the state, public interests and private interests.

Whereas customary law is the law or unwritten rule that grow and thrive in a society that is only obeyed by the concerned people. Customary law has the ability to adjust and elastic because its rules are not written. In the common law tradition, which also known as the Society Law which is a set of people who were bound by a legal order / customs regulations as citizens with a law partnership that grew because of the basic similarity of descent or place of residence. Based on the description above, it seems clear that the force of customary law does not depend on the provisions of the law, but the common law rule that a binding force. therefore the system of legislation and customary law can not be separated.

One of the most important law in society is the marriage law. And in addition to marriage law,inheritance law is part of the family laws that play a big role even determines and reflects the legal system and forms prevailing in a society. This is because the law of inheritance it is closely related to the scope of human life. In Indonesia, customary inheritance law is pluralistic by tribes or ethnic groups that exist. Basically it is caused by the different

system lineages, which became the basis of the system of tribes or ethnic groups. The problem is, among other things: Are there similarities between customary inheritance laws adopted by various tribes or groups such ethnic, and whether it would exist even though they lived outside the area of origin.

Heritage is a matter of understanding and the various rights and obligations about one's wealth at the time of his death will shift on others who are still alive. Thus, the inheritance law contains provisions that govern the continue way and transition assets (tangible or intangible) of the testator to his heir. Customary inheritance law contains regulations that govern the operation of the forwarding and stuff possessions and goods that are not tangible objects (Immateriale Goederen) of a human generation (Generatie) to offspring.

Accordance with certain provisions applicable law, the authors would like to describe in general about the customary law of the indigenous peoples of South Belu follow civilization "WEWIKU - WEHALI" about child adoption (adopting) with all the risks, or sanctions if violated by the followers of the indigenous. Customary inheritance law in South Belu is an actual problem which endlessly discussed and questioned. this is due from the first until now, prevailing system maternal ancestry (Matrilineal) that they originated from a single mother from the maternal line is calculated according to the brothers and sisters, mothers and siblings both men and women, fathers and his brethren, both men and women, and so on according to the lineage of women. With itself all the child can only be an heir of his own mother.

But different with the system in the Minangkabau descent who also adopts a matrilineal descent, the South Belu also still considering that the continuation of the father lineage by doing adoption. Adopsion or in a customary language "Matamusan" is the liaison between the family of the father and mother. this is done because the mating system in the South Belu adopts matrilineal which is when the marriage took place, automatically guy (man) must be entered in the clan after he marry the women (status law: Mane Maktama Uma).

Child which is going to be adopted is one of the biological children in the family that is given back to the father's family as a sign that the child who will replace his father. Presence of customary law is very important in this indigenous tradition because it is customary to wear clan matamusan child's father and all affairs in accordance with the custom followed father is no longer in mother clan. therefore in every affair of indigenous or tribal interests, the child gets a place as his father. so the family always called her father as a close family when there is a celebration (Lahan Mate Moris). But because of the modern era has influence the customary life in Indonesia, there are some familly who had break the law.

### **Literature Review**

Law is actually provides a rich source of scholarly inquiry into legal history, philosophy, economic analysis and sociology. Law also raises important and complex issues concerning equality, fairness, and justice, as well as the proposition that All are equal before the law. The author Anatole France said in 1894, "In its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets, and steal loaves of bread."

Writing in 350 BC, the Greek philosopher Aristotle declared, "The rule of law is better than the rule of any individual." Mikhail Bakunin said: "All law has for its object to confirm and exalt into a system the exploitation of the workers by a ruling class". Cicero said "more law, less justice". Marxist doctrine asserts that law will not be required once the state has withered away

One definition is that law is a system of rules and guidelines which are enforced through social institutions to govern behavior. In *The Concept of Law* Hart argued law is a "system of rules"; Austin said law was "the command of a sovereign, backed by the threat of a sanction"; Dworkin describes law as an "interpretive concept" to achieve justice; and Raz argues law is an "authority" to mediate people's interests. Holmes said "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Aquinas said that law is a rational ordering of things which concern the common good that is promulgated by whoever is charged with the care of the community. This definition has both positivist and naturalist elements.

There are some kind of law such as : contract law, property law, trust law, tort law, criminal law, constitutional and administrative law, international law, intellectual property law, and civil law. Customary law is a part of civil law. According to Ter Haar who is famous with his Beslissingenleer theory (decision theory) revealed that customary law is includes all regulations which transformed in the decisions of the authorities who have the legal authority and influence, as well as in its implementation shall apply immediately and complied wholeheartedly by those who are governed by the decision. The decision may be a dispute, but also taken based on harmony and consensus. In his writings Ter Haar also stated that

customary law can arise from the decision of the community (1930). Meanwhile, according to Soejono Soekanto, customary law is essentially a law of habit, but a habit that has law impact (das sein das sollen). In contrast to the behavior (in the usual sense), a habit which is the application of common law are acts performed repeatedly in the same form (1981 : 28).

### **Theory of culture**

Hoebel describes culture as an integrated system of learned behavior patterns which are characteristic of the members of a society and which are not a result of biological inheritance (1972). Culture is the systems of knowledge shared by a relatively large group of people in form of the cumulative deposit of knowledge, experience, beliefs, values, attitudes, meanings, hierarchies, religion, notions of time, roles, spatial relations, concepts of the universe, and material objects and possessions acquired by a group of people in the course of generations through individual and group striving.

According to Varron(2010), characteristics cultures throughout the world have these characteristics or qualities. There are eight characteristic of cultures : culture is learned by any individual, especially if he/she grows up with that particular culture ; Culture is shared by a group of people which consider a thought or an action as a culture ; Culture is cumulative, different knowledge embodied in culture can be passed from one generation to another generation ; Cultures change, Not all cultures accumulate ; Culture is dynamic which was considered that there is no culture remains on the permanent state ; Culture is ideational which forms ideal pattern of behaviors that followed by individuals expectedly ; Culture is diverse

which was considered that culture was formed by many separate cultures ; Culture gives us a range of permissible behavior patterns.

Indonesia is a country of great diversity and its national motto is “Unity in Diversity “. This diversity is also found in all aspects of culture : language, housing, cuisine, dance and music, artistic expression, etc as each has many local variants. Some of Indonesia's ethnic groups have strong kinship groupings based upon patrilineal, matrilineal, or bilateral descent.

### **Theory of adoption**

Adoption is a process whereby a person assumes the parenting for another and, in so doing, permanently transfers all rights and responsibilities, along with filiation, from the biological parent or parents. Forms of adoption practices can be open or closed. The first is Open adoption which allows identifying information to be communicated between adoptive and biological parents and, perhaps, interaction between kin and the adopted person. The second is the practice of closed adoption (aka confidential or secret adoption), which has not been the norm for most of modern history, seals all identifying information, maintaining it as secret and preventing disclosure of the adoptive parents', biological kins', and adoptees' identities.

In the Indonesian positive law, has given some rules contained in Indonesian legislation that gives a special sense of adoption and adopted children. According to Article 1 paragraph 2 of Government Regulation 54 of 2007 on the Implementation of Child Adoption, adoption is a legal act that distracts a child from parental authority environmental, legal guardian



or other person responsible for the care, education, and child rearing into the adoptive family environment.

Adopted children in terms of customary law can be taken from a variety of customary opinions of legal scholars, such as: Imam Sudiyat in his book of Customary Law Principle Sketches, which says that the removal of the child contained in the entire archipelago, is the act of picking up / adopt a child from the outside to the relatives, so entwined together a social bond with the bond of nationality biological ( 2000;102 ). According to the opinion of Imam Sudiyat, act in the child's legal adoption occurs when there is a creation of social ties between the adopted child and the adoptive family.

### **Methodology**

The present research used descriptive qualitative method. Descriptive models used to describe the state of customary law used in the determination of *matamusan* in Wewiku Wehali, Belu. Qualitative research was done by describing the phenomenon found out in the data, then continued with general conclusion. It was designed to help the researcher understand peoples, social and cultural context within which they live. Based on the results of an evaluative study model, it can be defined as a development strategy recommendations / increase the effectiveness of traditional sanctions of *matamusan* determination in Wewiku – Wehali.

### **The data source**

The main data were taken from the statements and explanation spoken by chief of the tribe ( Fukun and Katuas ) who ever handle the infraction of *matamusan* determination, the *matamusan* child itself, the family who doing

the infraction of matamusan determination in their matrilineal system, and people who live in Wewiku Wehali as the result of the interview. And another data is researcher's own documentation from the video record and some photograph of matamusan steps chronologically.

### **Technique of Data Collection**

To collect the data, the following steps were done by researcher : researchers conducted an observation and free interviews with the respondents to obtain data which is then analyzed in context, researchers watch and understand the audio-visual recording matamusan determination based on customary law and take a note of some important data, and researchers analyze and identify the results of the data collection with some related references.

### **Data Analysis**

The step to analyzed the data are follows : Watching the video and reading the data to get a good understanding, translating the data founding into English, identifying the customary law that exist at the custom society, analyzing the step of matamusan determination based on the picture and action on the video record in order to know the meaning of that customary law and the chronologycal step. To get more validation of the data, it should be tested using data triangulation. Data triangulation involves using different *sources* of information in order to increase the validity of a study. In Extension, these sources are likely to be stakeholders in a program— participants, other researchers, program staff, other community members, and so on. In the case of customary law in matamusan determination, the research would start by identifying matamusan child, matamusan's family,

fukun/katuas, and the society at Wewiku Wehali by comparing the result of observation with the interview. The next step is organizing the data into specific aspect based on classification above, analyzing factors which influence the infraction toward the customary law at matamusan determination and describing the conclusion of the analysis.

### **Research finding and discussion**

Data : “ *Mata no musan nee naak hili ba hatos. Matamusan nee ema mai nola oa ida i uma laran ba nakseluk nia ama kalo nian ama mate.*”

(Mata and musan means choose for adoption. Matamusan is the determination of adoption in order to replace her/his father position if his/her father die).

Literally, *Oa* means children, *Mata* means eye, and *musan* means seeds. Here seed means something which will grow into something bigger and useful. Matamusan means choose for adoption. So the meant of *OaMatamusan* in the system of Belunese's customary law marriage is the substitute for father position / personal in father's family. People in Belu doing an adoption to appreciate father's lineage. The child will occupy the position of his father and acquire all of his father's rights in the family.

### **Chronological step of matamusan determination**

Series of traditional ceremonies in matamusan determination may include a variety of cultural activities and organized based on customary law in traditional rituals in the following way: (a) *hamutuk* (gather). In this process the father's family will gather completely without lagging (*hamutuk*). It is a symbol that the father's family gladly and ready to welcoming their new family member who will replace his father who had been pass away. (b) *hosi*

*uma ai kalete* (wait in intermediary's house). Before mourn to the funeral house, the father's family should not directly go to the funeral house (*umamaten*). They have to stop and wait at the place of *aikalete* (person who acts as a liaison between the father's and mother's family). (c) *tudu oa matamusan* (choose matamusan child). Ai kalete will bring all child in that family and they have to stand in line and hold sarong (*tais*) with them as the symbol of their respect to their father in which they are ready to be choosed and replace their father's position on father's family. If the father's family desired to choose a boy to be adopted then the boy will be wear men sarong (*taismanek*) and wearing clothes which is brought by the father's family. if the father's family desired to choose a daughter then she will be wear women sarong (*taisfeto*) and bracelet (*riti*) or silver or gold earrings (*karabu*). (d) *haman ba uma maten* (go to the funeral). After they have choose the matamusan child, then they will go to the funeral, meet the mother's family to show their respect. (e) *tene fila uma* (invite the matamusan child to come home). After the burial and the decision of matamusan already known by both parties then it's over so father's family will ask the child to come home with them.

### **The Development of Matamusan Implementation**

The comparison between real and the current implementation of matamusan determination :

Data : (1) “ *Ema uluk sira tudu matamusan nee tui ukun matabian no maromak. Tanba oa nee iha loron ikus bele nalo foti ita ema umanalaran. Nia hai be ema uluk sir tui ukun ida be ema ra'ak ita tuir ukun nee iha ita kan umakain, no ita kan kmaluk, no ita kan manemalun fetomalun hotu.* ” ( Long time ago, people used to follow the laws of the

ancestors and God. because the matamusan child will increase the life of the family later. That is the reason why they follow the law in the family, friendship, and brotherhood.)

(2)” *Ema ikus nee tuir hai ukun ida hosi matabian sira. Tanba ema ikus nee raneo raak sira nu hai ema uluk. Sira sekola mos tian sira ba rein iha ema rain haibe sira tuir hai buat lulik nee sira. Ma sira la bele hakur lia ukun hosi fukun sira.*”( nowadays people do not follow the laws of the ancestors. because they think that they are different from people before. After school, they live in another city and did not follow customary traditions. but they can not ignore the sanction which is given by the tribal chiefs.)

Along with the times, there were many changes that affect the tradition alive and thriving in the community Wewiku Wehali. Belunesse began to migrate to the more developed areas to get a better life (*lao ba ema rain*). Adults begin to look for a job in the city and settled there. The youth begin to continuing their education in a big city to get a better quality of education. Another changing happened to the matamusan child. They were unable to admit and discharge their duty to be adopted by the father’s family. They tend to follow other family members to the mother’s family without feeling obliged to follow traditional ceremony which is held at the father’s family. Beside it is happened to matamusan child, some of the attire used as the symbol in choose matamusan child also changing. If they are used to bring tais (sarong), clothes and jewelry as a symbol of their reception, they are now usually only bring tais. because they believe that the essence of the election is the use of tais as mark on the choosen child.

**Factors influencing the development of matamusan determination**

From the research, the author will describe some cases matamusan violations that have occurred in Wewiku Wehali based on some different reason as the impact of the development proses in society such as : (a) The distance to the center of tribal village. Some matamusan break the rule because of their home is too far from the tribal village in which all the traditional ceremonies are done. (b) The child was adopted before matamusan election. Another reason that may cause matamusan violation is because the matamusan child has been adopted before the choosen time to be matamusan. (c) The child is too spoiled that she does not want to be adopted. Matamusan determination can be violate based on the reason that the child is a spoiled chid that never want to stay far from her mother and her other brother. (d) Problem between both family. Beside all of the reason before, relationship between both family can influence the violation. When both family do not get along well, matamusan child will be difficult in fulfill her responsibility. (e) Choose matamusan who have been married. As the last but not least, choose a matamusan that have been married may also cause a problem. Especially if the matamusan get married with a man from another tribe.

**The effectiveness of customary law toward matamusan determination**

Enforcers of customary law is custom leaders/ traditional chief as a highly respected leader and a huge influence in the environment of indigenous peoples to maintain the integrity of a prosperous life. According to custom, chiefs are the controlling or governing institutions in the indigenous society. They are playing very inimitable, original and/or unique roles in that communities.No one denies that when chiefs are enthroned they are the highest ranking persons in our traditional leadership system. It is

therefore every tribe must have a chief who shall be the head of the tribe just like the government, the churches or organizations with appointed respective heads. Chiefs must be appointed or mandated by members of their respective tribes. The national security, the police must work in partnership with traditional chiefs. Chiefs are more approachable and very close to their own people than the police.

In South Belu, the most basic of social unity is clan , known as , *fukun* or *uma* , among *Ema Tetun* in Belu Regency . They are the people who enforce the customary law. *Fukun* is a social unit genealogical unity , primordial – ethnosentris , which serves to ensure that all the needs of both physical and spiritual life of its members through the responsibilities , rights and obligations under the leadership of the head of a tribe called, *Matas kawaik uma manaran* (one of the oldest in the uma/clan) and which can also hold a dato.

In case of violation of Matamusen determination, Fukun or katuas is the party entitled to the customary sanctions. After the case was reported by a defendant to a Fukun, then he would negotiate with other fukun to determine whether the reported cases deserve to be punished / fined. Custom settlement that resulted in the disruption of family balance reached by *tur mutu* (deliberation) between customary chief with certain considerations. Usually as a first warning, fukun would suggest a meeting to be held between the two sides to reach agreement amicably so that the case does not proceed with sentencing / fines. If the case can not be solved by means of kinship, then the case will continue with sanctions.

## **Discussion**

Motivation of customary adoption is more concerns on the extinction of the generations. Different from the essence of adoption based on the Law no. 23 of 2002 about the Protection of Children (Child Protection Act) which emphasizes motivation for the best interests of the child. On article 39 paragraph (1) of the Child Protection formulate clear: "Adoption can only be done for the best interest of the child and performed by local custom and the provisions of the legislation in force".

According to the opinion of Sudiyat, act in the child's legal adoption occurs when there is a creation of social ties between the adopted child and the adoptive family (1981). This kind of social ties can be created in matamusan adoption system. People in South Belu has a unique customary inheritance which is different with another society who also adopts a matrilineal descent. It is because of in South Belu tradition, they still considering the continuation if the father lineage by doing adoption which called matamusan.

When a society considers certain behaviors or practices so common as to be required by law, whether officially recorded or not, those beliefs establish the basis for customary law and this law has to be handle by the leader of the tribal community. In the case of matamusan determination it should be obey because if they do not obey it, the family will be fined by fukun based on filing from a large family of his father. The given fines would be very detrimental because they have to submit all inheritance owned by the family.

According to Soekanto, customary law is essentially a law of habit, but a habit that has law impact (*das sein das sollen*) (2002). In contrast to the behavior (in the usual sense), a habit which is the application of common law



are acts performed repeatedly in the same form. That is the reason why matamusan determination should be done chronologically based on the customary law in the same form.

Vollenhoven says that the customary law is all rules about positive behavior whis is in one side has the sanction (legal) and on the other side it is no codified (custom) (1981). This theory describe in the fact that customary law is the law of behavior. This behavior include their responsilbe in doing the habbit in their custom. When people violate the rule of this habbit, they should get the sanction.

Along with the times, there were many changes that affect the tradition alive and thriving in the community Wewiku Wehali. Belunesse began to migrate to the more developed areas to get a better life. Adults begin to look for a job in the city and settled there. The youth begin to continuing their education in a big city to get a better quality of education. There are some changing in their paradigm and their habbit that they do not fulfill their obligation as matamusan. Cultural changes in society can be caused by the people themselves or immigrants who settled in the area, causing a change in the society itself. The main factors that cause a change of culture is the influence of other cultures coming into the culture.

In handle the violation of Matamusan determination, Fukun or katuas is the party entitled to the customary sanctions. After the case was reported by a defendant to a Fukun, then he would negotiate with other fukun to determine whether the reported cases deserve to be punished / fined. Custom settlement that resulted in the disruption of family balance reached by deliberation between customary chief with certain considerations. Usually as a first warning, fukun would suggest a meeting to be held between the two sides to reach agreement amicably so that the case does not proceed with

sentencing / fines. If the case can not be solved by means of kinship, then the case will continue with sanctions.

### **Conclusion**

The researcher conclude that Suth Belunesse marriage system is a culture that balances and appreciate continuation of father's and mother's lineage despite in their matrilineal system of marriage. This matamusan child will occupy the position of his father and acquire all of his father's rights in the family. The implementation of matamusan determination has been developed as time goes by. There are many changing effected the traditional custom at Wewiku Wehali. But those changing can be minimize by the effectiveness of customary law. Those who defend the enforcement of customary law is fukun. When a matamusan violations occurs, fukun will work to resolve by giving sanctions to the offender.

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